IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE PATENT APPLICATION OF:	Joseph G. GATTO
SERIAL NO.:	09/893,460
ATTORNEY DOCKET NO:	089070-0311366 *(23449-013)*
FILING DATE:	June 29, 2001
ART UNIT :	3624
EXAMINER	NARAYANSWAMY SUBRAMANIAN
FOR:	SECURITY ANALYST ESTIMATES PERFORMANCE VIEWING SYSTEM AND METHOD

SUPPLEMENTAL BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Dear Sir:

Further to the *"Notification of Non-Compliant Appeal Brief"* mailed **June 2, 2006,**

Appellant respectfully submits this Supplemental Appeal Brief on Appeal pursuant to 37

C.F.R. §41.37.

It is believed that no fees are due in connection with the filing of this Supplemental

Appeal Brief. In the event that it is determined that fees are due, however, the Director is

hereby authorized to charge the undersigned's Deposit Account No. 033975 (**Ref. No.**

089070-0311366).

<div align="center">

REQUIREMENTS OF 37 C.F.R. §41.37

</div>

I.   REAL PARTY IN INTEREST - *37 C.F.R. §41.37(c)(1)(i)*

By virtue of the Assignment recorded October 23, 2001 at reel 012277, frame 0740, the real party in interest is Starmine Corporation.

II.   RELATED APPEALS AND INTERFERENCES - *37 C.F.R. §41.37(c)(1)(ii)*

Appellant is aware of no related appeals or interferences.

III.   STATUS OF CLAIMS - *37 C.F.R. §41.37(c)(1)(iii)*

Pending: Claims 1-40 are pending.

Cancelled: No claims are cancelled.

Rejected: Claims 1-3 and 6-40 stand rejected.

Objected: Claims 4-5 are objected to as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Allowed: No claims have been allowed.

On Appeal: Claims 1-3 and 6-40 are appealed.

IV.   STATUS OF AMENDMENTS - *37 C.F.R. §41.37(c)(1)(iv)*

No amendments have been filed subsequent to the Final Office Action mailed October 11, 2005 (hereinafter "Final Action").

V.   SUMMARY OF CLAIMED SUBJECT MATTER - *37 C.F.R. §41.37(c)(1)(v)*

The following underline exemplary citations to the Specification and drawing figures are not exclusive, as other examples of support for claimed subject matter exist. As such, the following citations should not be viewed as limiting.

One aspect of the invention relates to a system and method for monitoring analysts' estimates and issuing alerts (or reminders) informing users of the occurrence of various events (and/or highlighting issues) associated with estimates. *See* Specification, *e.g.*, pg. 92, lines 15+.

A.   Independent Claim 1.

According to an aspect of the invention, the system may include means for storing on a per analyst basis, current estimate data for a plurality of analysts, the data including at least an estimate amount and when the estimate was made. In one implementation, the "means for storing..." may correspond, for example, to *at least* Current Data module (3804) of the Analyst measurement tool (FIG. 34). Current Data module (3804) may provide various forms of current estimate and other prediction or financial projection data for one or more analysts or sources. Current data may include estimate data, recommendation data, and other data as of the current date. For instance, current data may include estimate data (3860) for one or more selected or defined analysts or sources. Estimate data may encompass estimates for one or more earnings events for a defined period of time, such as a fiscal period, or other time period. *See* Specification, *e.g.*, pg. 93, lines 16-21; and FIG. 34.

According to an aspect of the invention, the system may include means for analyzing the current estimate data and determining when one or more alert conditions are satisfied. In one implementation, the "means for analyzing..." may correspond, for example, to *at least* one or more of the software modules of the Analyst measurement tool (FIG. 34). *See* Specification, *e.g.*, pg. 93, lines 6+.

In one implementation, the system may include means for issuing an alert when at least one predetermined alert condition is satisfied for at least one analyst. In one implementation, the "means for issuing an alert..." may correspond, for example, to *at least* one or more of the software modules of the Analyst measurement tool (FIG. 34). By using the Analyst measurement tool, for instance, a user may define various conditions and events for notification via Define module (3880) along with a template or list of various available triggers from Database (3850). A user may further edit conditions and other features using Edit/Delete module (3882), and define one or more methods of notification via a Set Notification module (3884). *See* Specification, *e.g.*, pg. 95, lines 4-6; pg. 97, lines 3-8; and FIG. 34. When an event or condition occurs, the user may be notified via email, an instant messaging system, cell phone, PDA, pager, phone, or by other methods of communication. In addition, a user may be notified of alerts by accessing a web-site. *See* Specification, *e.g.*, pg. 93, lines 16-21; and FIG. 34. Other communication methods may be implemented.

B.   Dependent Claim 4.

According to an aspect of the invention, the system may, as recited in dependent claim 4, include means for defining conditions that constitute a cluster of estimate revisions, detecting a cluster of estimate revisions, and issuing at least one alert condition

when an analyst's estimate is older than a date associated with a detected cluster of estimate revisions. In one implementation, the "means for defining conditions ..." may correspond, for example, to *at least* one or more of the software modules of the Analyst measurement tool (FIG. 34). As recited above, by using the Analyst measurement tool, a user may define various conditions and events for notification via Define module (3880) along with a template or list of various available triggers from Database (3850). A user may further edit conditions and other features using Edit/Delete module (3882), and define one or more methods of notification via a Set Notification module (3884). *See* Specification, *e.g.*, pg. 95, lines 4-6; pg. 97, lines 3-8; and FIG. 34. In one implementation, a "cluster" may be signaled by the occurrence of a number of analysts revising their estimates in a short time period. This may occur as a result of the release of company news, changes in the industry, earnings releases, or in response to other issues that may affect future earnings. A cluster may serve as an indication of the flow of new information into the marketplace characterized by analysts revising as a group. In one implementation, revision clusters may be detected using a cluster's "begin date" as a filter. Those analysts who have not revised their estimates within a certain time period from the "begin date" may be notified. Users are also able to identify which estimates have been updated since the recent news or other events. *See* Specification, *e.g.*, pg. 96, lines 8-19.

C.   Dependent Claim 13.

According to an aspect of the invention, the system may, as recited in dependent claim 13, include means for displaying an analyst, the analyst's estimates, and simultaneously displaying an alert indicator in association with an individual analyst's estimate if the estimate satisfies at least one alert condition. In one implementation, the

"means for displaying ..." may correspond, for example, to *at least* View module (3886) of the Analyst measurement tool. A user may, via View module (3886) select to view alerts that are associated with one or more selected analysts. The user may sort alerts through various factors and categories for analysis and comparison. *See* Specification, *e.g.*, pg. 97, lines 16-19; and FIG. 34. FIG. 38 is an exemplary depiction of a display for viewing current data of a selected analyst (*e.g.*, "A. Sanger") according to one implementation of the invention. As shown, the view for a selected analyst may show, among other data, the stocks covered by the analyst, the analyst's current recommendations, and the analyst's EPS estimates. *See* Specification, *e.g.*, pg. 103, lines 14-18. A symbol may be used to indicate an associated alert for a particular estimate. In one implementation (as shown in FIG. 38) the symbol may comprise a yellow triangle with an exclamation point. Other symbols may also be used to designate an associated alert. In the example of FIG. 38, an alert, as indicated by symbol (4124), may be associated with the analyst's estimate of 0.15 for stock BHI under Next Quarter column (4116). *See* Specification, *e.g.*, pg. 96, lines 20+; and pg. 105, lines 1-8.

D.   Dependent Claims 14, 18, and 20-24.

According to an aspect of the invention, the system may, as recited in dependent claims 14, 18, and 20-24, include means for displaying (and/or enabling a user to view) one or more (or a combination) of: data associated with alerts; a list of analysts for which there is at least one satisfied alert condition; all alerts associated with an analyst; selected alerts associated with an analyst; all alerts associated with an analyst for at least one selected time period; and selected alerts associated with an analyst for at least one selected time period. In one implementation, the "means for displaying..." may correspond, for

example, to *at least* one or more of the software modules of the Analyst measurement tool

(FIG. 34). Analyst measurement tool (as illustrated in FIG. 34), may enable users to view

various information relating to analysts and other sources concerning current data (3804),

performance data and/or metrics (3805), alerts (3806), and other information. *See*

Specification, *e.g.*, pg. 93, lines 11-13; and FIG. 34. Users may, for example, select to

view alerts that are associated with one or more selected analysts, via view module (3886),

and to sort alerts through various factors and categories for analysis and comparison. *See*

Specification, *e.g.*, pg. 97, lines 16-19; and FIG. 34. *At least* FIGS. 35-38, and 39A

provide exemplary illustrations of the various displays and navigation objects, enabled by

Analyst measurement tool (FIG. 34), that a user may use to select and display data

associated with alerts pertaining to (all, or a selection of) analysts according to one

implementation of the invention. Of course, the displays illustrated in the drawing figures

referred to above are exemplary only and may differ in appearance and configuration.

   E.   Independent Claim 40.

According to an aspect of the invention, a method is provided for monitoring

analysts' estimates and issuing alerts (or reminders) informing users of the occurrence of

various events (and/or highlighting issues) associated with estimates. *See* Specification,

e.g., pg. 92, lines 15+.

One aspect of the invention comprises storing on a per analyst basis, current

estimate data for a plurality of analysts, the data including at least an estimate amount and

when the estimate was made. For example, Current Data module (3804) of the Analyst

measurement tool (FIG. 34) may provide various forms of current estimate and other

prediction or financial projection data for one or more analysts or sources. Current data

may include estimate data, recommendation data, and other data as of the current date. For instance, current data may include estimate data (3860) for one or more selected or defined analysts or sources. Estimate data may encompass estimates for one or more earnings events for a defined period of time, such as a fiscal period, or other time period. *See* Specification, *e.g.*, pg. 93, lines 16-21; and FIG. 34.

One aspect of the invention comprises analyzing the current estimate data and determining when one or more alert conditions are satisfied as performed by *at least* one or more of the software modules of the Analyst measurement tool (FIG. 34). *See* Specification, *e.g.*, pg. 93, lines 6+.

One aspect of the invention comprises issuing an alert when at least one predetermined alert condition is satisfied for at least one analyst. By using the Analyst measurement tool, for instance, a user may define various conditions and events for notification via Define module (3880) along with a template or list of various available triggers from Database (3850). A user may further edit conditions and other features using Edit/Delete module (3882), and define one or more methods of notification via a Set Notification module (3884). *See* Specification, *e.g.*, pg. 95, lines 4-6; pg. 97, lines 3-8; and FIG. 34. When an event or condition occurs, the user may be notified via email, an instant messaging system, cell phone, PDA, pager, phone, or by other methods of communication. In addition, a user may be notified of alerts by accessing a web-site. *See* Specification, *e.g.*, pg. 93, lines 16-21; and FIG. 34. Other communication methods may be implemented.

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL - *37 C.F.R. §41.37(c)(1)(vi)*

A.   Claim 1 stands rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 43 of U.S. Patent Application No. 10/119,082 to Gatto (hereinafter "Gatto '082). *See* Final Action, pg. 3, ¶5.

B.   Claims 1-3 and 6-40 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,608,620 to Lundgren in view of U.S. Patent No. 6,208,720 to Curtis *et al.* ("Curtis"). *See* Final Action, pg. 4, ¶7.

<div align="center">***</div>

The rejection of claim 40 under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter has been withdrawn. *See* 1/30/06 "Notice of Panel Decision from Pre-Appeal Brief Review."

VII.   ARGUMENTS - *37 C.F.R. §41.37(c)(1)(vii)*

The rejection of each of claims 1-3 and 6-40 should be reversed for the reasons set forth herein.

A.   **THE OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION OF CLAIM 1 IS LEGALLY IMPROPER**

The Examiner legally erred in rejecting claim 1 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 43 of Gatto '082. Appellant notes that claim 43 of Gatto '082 <u>issued</u> as claim 1 of U.S.

Patent No. 6,983,257 B2 (hereinafter "Gatto '257") on January 3, 2006. Accordingly, the Examiner's rejection will now be addressed with regard to claim 1 of Gatto '257.

The Examiner alleges that all of the features of independent claim 1 of the instant application are listed in claim 1 of Gatto '257, with the exception of *"means for issuing an alert when at least one predetermined alert condition has been satisfied."* The Examiner alleges that this feature would have been obvious to one of ordinary skill in the art, however, because the *"issuance of alert would have allowed the user to take appropriate action in response to the alert."* *See* Final Action, pgs. 3-4; as well as 03/25/05 Office Action, pg. 4. This rejection is <u>improper</u> and should be reversed for *at least* the reason that claim 1 of the instant application is patentably distinct from, and <u>not</u> an obvious variation of, the subject matter of claim 1 of Gatto '257.

> 1.   <u>Claim 1 of Gatto '257 does not disclose the features of claim 1 of the instant application as alleged by the Examiner.</u>

Appellant traverses the Examiner's assertion that all of the features of independent claim 1 of the instant application are listed in claim 1 of Gatto '257, with the exception of *"means for issuing an alert when at least one predetermined alert condition has been satisfied."* In addition to the missing feature conceded by the Examiner, claim 1 of Gatto '257 also fails to include, for example, the feature of *"means for analyzing the current estimate data and determining when one or more alert conditions are satisfied"* as recited in claim 1 of the instant application.

In the Final Action, at pg. 4, the Examiner alleges that the *"at least one error metric"* as recited in claim 1 of Gatto '257 <u>is</u> an alert condition. The Examiner further alleges that support for his interpretation may be found in claims 6, 7, and 10 of the instant application. *See* Final Action, at pg. 5, ¶9. Appellant disagrees.

Claim 1 of Gatto '257, reproduced below, is directed to a computer-implemented system for objectively measuring security analysts' performance based on <u>historical accuracy</u> of their earnings predictions for one or more securities.

> 1. A computer-implemented system for objectively measuring security analysts' performance based on **historical accuracy** of their earnings predictions for one or more securities, the system comprising:
> a database of **historical data**, the historical data including:
>> (i) individual earnings predictions by a plurality of analysts pertaining to at least one earnings event for a given security;
>> (ii) revisions made by an analyst to an earnings prediction prior to an actual earnings report date;
>> (iii) actual reported earnings for earnings events for securities; and
>> (iv) dates of the earnings predictions, revisions to earnings predictions, and the actual reported earnings;
> a user interface for selecting criteria, including one or more of a time frame over which earnings predictions are to be measured; a number of periods over which to measure performance; at least one error metric to be used to calculate performance; one or more securities over which to measure performance; and exclusion criteria by which to exclude certain earnings predictions; and
> a processor for determining performance based on the selected criteria and the historical data. **Emphasis added**.

The claim recites a user interface for selecting criteria, and a processor for determining performance based on the selected criteria and historical data. One example of the criteria that may be selected includes at least one error metric to be used to calculate performance. As such, error metrics (as disclosed and claimed in Gatto '257) may comprise various metrics used when objectively measuring security analysts' performance based on <u>historical accuracy</u> of their earnings predictions for one or more securities.

The alert conditions disclosed and claimed in claim 1 of the instant application, by contrast, relate to <u>current</u> estimate data for analysts:

> 1.   A system for monitoring analysts' estimates comprising:
> means for storing on a per analyst basis, **current estimate data for a plurality of analysts**, the data including at least an estimate amount and when the estimate was made;

means for **analyzing the current estimate data and determining
when one or more alert conditions are satisfied**; and
means for issuing an alert when at least one predetermined alert
condition is satisfied for at least one analyst. **Emphasis added.**

Accordingly, error metrics, as recited in claim 1 of Gatto '257, are <u>not</u> alert conditions relating to <u>current</u> estimate data for a plurality of analysts, as alleged by the Examiner. Moreover, claims 6, 7, and 10 of the instant application (upon which the Examiner relies for his interpretation) relate to a "summary metric" and are not relevant to error metrics as disclosed and claimed in Gatto '257. As the foregoing illustrates, the Examiner's definition of the "*at least one error metric*" as recited in claim 1 of Gatto '257 as an alert condition is without basis, and is contrary to the meaning of these terms in view of the Specification and claims of both Gatto '257 and the instant application.

2.   The Examiner has failed to establish a prima facie case of obviousness.

A double patenting rejection of the obviousness-type is "analogous to [a failure to meet] the nonobviousness requirement of 35 U.S.C. 103" except that the patent principally underlying the double patenting rejection is not considered prior art. In re Braithwaite, 379 F.2d 594, 600 n.4, 154 USPQ (BNA) 29 (CCPA 1967). Therefore, any analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. 103 obviousness determination. In re Braat, 937 F.2d 589, 19 USPQ2d (BNA) 1289 (Fed. Cir. 1991); In re Longi, 759 F.2d 887, 225 USPQ (BNA) 645 (Fed. Cir. 1985). Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection, the factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ (BNA) 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103 are employed when making an obvious-type double patenting analysis.

As noted above, the Examiner's recited motivation for modifying Gatto '257 to include the admittedly missing feature of *"means for issuing an alert when at least one predetermined alert condition has been satisfied"* is because the *"issuance of alert would have allowed the user to take appropriate action in response to the alert."* See Final Action, pg. 4. The Examiner's recited motivation for modifying Gatto '257 is insufficient for *at least* the reason that it only states what a benefit of the modification would be (*e.g.*, allowing a user to take action), but <u>fails</u> to demonstrate <u>any</u> teaching, suggestion, or motivation found in either Gatto '257, or in the knowledge generally available to one of ordinary skill in the art, as to why it would have been obvious to modify Gatto '257.

For *at least* each of the foregoing reasons, the rejection of claim 1 under the judicially created doctrine of obviousness-type double patenting is improper and should be reversed.

B.   <u>CLAIMS 1-3 AND 6-40 ARE PATENTABLE UNDER 35 U.S.C. §103(a)</u>

The Examiner legally erred in rejecting claims 1-3 and 6-40 under 35 U.S.C. §103(a) over Lundgren in view of Curtis. Claims 1-3 and 6-40 are patentable for *at least* the reason that the Examiner has failed to establish a *prima facie* case of obviousness.

1.   <u>The Obviousness Determination.</u>

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. <u>See In re Fine,</u> 837 F.2d 1071, 1073, 5 USPQ2d (BNA) 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in <u>Graham v. John Deere Co.,</u> 383 U.S. 1, 17, 148 USPQ (BNA) 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to

combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d (BNA) 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ (BNA) 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ (BNA) 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d (BNA) 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Charles, 783 F.2d 1038, 1039, 228 USPQ (BNA) 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ (BNA) 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ (BNA) 143, 147 (CCPA 1976).

2.   Independent Claims 1 and 40.

In the 03/25/05 Office Action, at pg. 5, the Examiner recites that Lundgren does not explicitly teach the features (in independent claims 1 and 40) of determining when one or more alert conditions are satisfied, and issuing an alert when at least one predetermined alert condition is satisfied for at least one analyst, as disclosed and claimed by Appellant.

The Examiner relies on Curtis for these features, however, alleging that the *"combination of the disclosures taken as a whole suggests that users would have benefited*

from being informed about abnormal conditions so as to take appropriate actions in response to the notification of abnormal conditions."

The Examiner's recited motivation merely states what the alleged combination of the disclosures would suggest, or what "benefit" the combination of the disclosures may provide, but fails to set forth with <u>any</u> particularity whatsoever how the combination of disclosures taken as a whole suggests modifying Lundgren to arrive exactly at Appellant's claimed invention. In other words, the Examiner has focused on the "<u>result</u>" of the combination of Lundgren and Curtis, but has not provided any legally proper teaching, suggestion, or motivation to combine the two references. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d (BNA) 1596, 1598-99 (Fed. Cir. 1988).

Having provided no motivation to combine or modify the references, other than to improperly state what a benefit of the combination may be, it appears as though the Examiner has engaged in the classic exercise of hindsight reconstruction to pick and choose among separate disclosures to allegedly arrive at Appellant's claimed invention.

In the Final Action, the Examiner responds to the foregoing arguments <u>not</u> by pointing to some explicit teaching, suggestion or motivation in Lundgren and Curtis (or in the knowledge generally available to one of ordinary skill in the art) to explain why it would have been obvious to combine Lundgren and Curtis, but <u>rather</u> by providing a motivation that is just as vague, and somewhat circular in nature. The Examiner recites: "[*i*]*n this case, the motivation to combine is the benefit that users would have received*

from combining the teachings. This motivation would have been obvious to one of ordinary skill in the art." *See* Final Action, pg. 5. This is legally <u>improper</u>. Broad conclusory statements without explanation are insufficient to establish a *prima facie* case of obviousness.

For *at least* the foregoing reasons, the Examiner has failed to meet the initial burden of producing a factual basis for a rejection under 35 U.S.C. §103(a), and has thus failed to establish a *prima facie* case of obviousness. Accordingly, the rejection of independent claims 1 and 40 should be reversed. Dependent claims 2-3 and 6-39 are allowable because they depend from allowable independent claim 1, as well as for the further features they recite.

3.   Dependent Claims 2-3 and 6-39.

The rejection of dependent claims 2-3 and 6-39 should likewise be reversed because the Examiner has failed to establish a *prima facie* case of obviousness. In the 03/25/05 Office Action, the Examiner provides no substantive examination of claims 2-3 and 6-39, but rather recites:

> With reference to claims 2, 3, and 6-39 the features in these claims are old and well known in the art. It would have been obvious to include these features to the combined disclosures of Lundgren and Curtis. The combination of the disclosures taken as a whole suggests that users would have benefited from being informed about abnormal conditions so as to take appropriate actions in response to the notification of abnormal conditions. *See* 03/25/05 Office Action, pg. 5.

In the "Response to First Office Action" submitted by Appellant on June 27, 2005, the rejection was <u>traversed</u> on the grounds that the Examiner provided no <u>evidence</u> to support the contention that the features of any of dependent claims 2-3 and 6-39 are old and well known in the context of a system for monitoring analysts' estimates, as disclosed and claimed by Appellant. *See* 6/27/05 Response, pg. 16.

In the Final Action, the Examiner fails to clarify the rejection, fails to provide any evidentiary support whatsoever in response to Appellant's argument, and addresses Appellant's argument merely by reciting: "*[a]pplicant's other arguments with respect to claims 1-40 have been considered but are not persuasive.*" *See* Final Action, pg. 6. This is clearly improper. It is impossible for Appellant to respond to the Examiner's broad conclusory statements in the absence of any evidentiary support or rationale as to how the subject matter of each specific claim is allegedly obvious over the already improper combination of Lundgren and Curtis further in view "well known" art that the Examiner has yet to produce. The Examiner's failure to provide any rationale or evidentiary support for the rejection of dependent claims 2-3 and 6-39 warrants reversal of the these rejections for failure to set forth a *prima facie* case of obviousness. Should the Examiner provide an explanation for the rejection of each of dependent claims 2-3 and 6-39, and identify the evidentiary support relied upon for each such rejection, Appellant expressly reserves the right to address the merits of the rejections.

VIII. **CLAIMS APPENDIX -** *37 C.F.R. §41.37(c)(1)(viii)*

The pending claims (claims 1-40) are attached in **APPENDIX A**.

IX. **EVIDENCE APPENDIX -** *37 C.F.R. §41.37(c)(1)(ix)*

APPENDIX B: None.

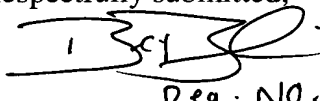**X.** **RELATED PROCEEDINGS INDEX -** *37 C.F.R. §41.37(c)(1)(x)*

APPENDIX C: None.

CONCLUSION

For at least the foregoing reasons, Appellants request that all rejections of claims 1-

40 be reversed, and the case passed to issue.

Date: <u>June 14, 2006</u>   Respectfully submitted,

                          Reg. No. 47,429

By: _____

for: James G. Gatto
       Registration No. 32,694

PILLSBURY WINTHROP SHAW PITTMAN LLP
P.O. Box 10500
McLean, Virginia 22102
Direct Dial: 703-770-7754
Main: 703-770-7900
Fax: 703-770-7901

APPENDIX A: CLAIMS APPENDIX

1.   (*original*) A system for monitoring analysts' estimates comprising:

means for storing on a per analyst basis, current estimate data for a plurality of analysts, the data including at least an estimate amount and when the estimate was made;

means for analyzing the current estimate data and determining when one or more alert conditions are satisfied; and

means for issuing an alert when at least one predetermined alert condition is satisfied for at least one analyst.

2.   (*original*) The system of claim 1, wherein one alert condition is based on whether an analyst's estimate is older than a predetermined amount of time.

3.   (*Previously Presented*) The system of claim 1, wherein one alert condition is based on whether an analyst's estimate is older than a date associated with a detected cluster of estimate revisions.

4.   (*original*) The system of claim 3, wherein the system further comprises means for defining conditions that constitute a cluster of estimate revisions, detecting a cluster of estimate revisions, and issuing at least one alert condition when an analyst's estimate is older than a date associated with a detected cluster of estimate revisions.

5.   (*original*) The system of claim 4, wherein the at least one predetermined alert condition is based on whether an analyst's estimate is more than a predetermined period of time older than a date associated with a detected cluster of estimate revisions.

6.   (*original*) The system of claim 1, wherein one alert condition is based on whether an analyst's estimate differs from a summary metric of a plurality of analysts' estimates by a predetermined value.

7.   (*original*) The system of claim 6, wherein the summary metric comprises a measure of central tendency, the measure of central tendency comprising at least one of a mean, median, or mode.

8.   (*original*) The system of claim 6, wherein the summary metric comprises a conditional summary metric qualified by at least one qualifying metric.

9.   (*original*) The system of claim 8, wherein the at least one qualifying metric comprises at least one of a predetermined time period, a particular security, or a group of securities.

10.   (*original*) The system of claim 6, wherein the predetermined value is more than "n" standard deviations away from a mean estimate, wherein "n" is an integer.

11.   (*original*) The system of claim 6, wherein the predetermined value comprises a

currency unit.

12.   (*original*) The system of claim 6, wherein the predetermined value comprises a

percentage.

13.   (*original*) The system of claim 1, wherein the system comprises means for displaying

an analyst, the analyst's estimates, and simultaneously displaying an alert indicator in

association with an individual analyst's estimate if the estimate satisfies at least one alert

condition.

14.   (*original*) The system of claim 13, wherein the system comprises means for further

displaying data associated with the alert condition.

15.   (*original*) The system of claim 14, wherein the data associated with the alert condition

comprises at least one of an indication of the alert condition or conditions that triggered the

alert.

16.   (*original*) The system of claim 14, wherein the data associated with the alert condition

comprises data relating to when the alert condition was triggered.

17.   (*Previously Presented*) The system of claim 14, wherein the data associated with the

alert condition comprises an indication of the alert condition or conditions that triggered the

alert and when the alert condition was triggered.

18.   (*original*) The system of claim 1, wherein the system comprises means for displaying

a list of a plurality of analysts estimates, where the list comprises a group of analysts for

which there is at least one satisfied alert condition.

19.   (*original*) The system of claim 18, wherein the group of analysts further comprises at

least one of analysts associated with a particular firm, or analysts with estimates in a

particular industry.

20.   (*Previously Presented*) The system of claim 1, wherein the system comprises means

for displaying a list of a plurality of analysts' estimates, wherein the list consists of analysts

for which there is at least one satisfied alert condition, and further comprising means for

displaying data associated with the alert condition.

21.   (*original*) The system of claim 1, further comprising means for enabling a user to

view all alerts associated with at least one analyst.

22.   (*original*) The system of claim 1, further comprising means for enabling a user to

view selected alerts associated with at least one analyst.

23.   (*original*) The system of claim 1, further comprising means for enabling a user to view all alerts associated with at least one analyst for at least one selected time period.

24.   (*original*) The system of claim 1, further comprising means for enabling a user to view selected alerts associated with at least one analyst for at least one selected time period.

25.   (*original*) The system of claim 1, wherein alert conditions are defined by a user of the system.

26.   (*original*) The system of claim 1, wherein a user specifies an action to be taken when an alert condition is satisfied.

27.   (*original*) The system of claim 26, wherein the action comprises issuing an alert message to a predetermined device.

28.   (*Previously Presented*) The system of claim 26, wherein the action comprises issuing an alert message by at least one of an e-mail message, phone, fax, or pager.

29.   (*original*) The system of claim 1, wherein an alert message is sent to a specified recipient when an alert condition is satisfied for an estimate made by an analyst.

30.   (*original*) The system of claim 29, wherein the specified recipient is the analyst.

31.   (*original*) The system of claim 29, wherein the specified recipient is someone associated with the analyst.

32.   (*original*) The system of claim 1, wherein a user specifies the frequency with which the system should check for alert conditions being satisfied.

33.   (*original*) The system of claim 1, wherein a user specifies how often the system should issue user alerts that at least one alert condition has been satisfied.

34.   (*original*) The system of claim 1, wherein the estimate relates to an estimate of a security's earnings estimate for a fiscal period.

35.   (*original*) The system of claim 34, wherein the fiscal period comprises at least one of a fiscal quarter, plurality of fiscal quarters, fiscal year, or a plurality of fiscal years.

36.   (*original*) The system of claim 1, wherein the estimate comprises a financial projection.

37.   (*original*) The system of claim 1, wherein an analyst has the capability of changing or confirming an estimate in response to an alert.

38.   (*original*) The system of claim 37, wherein an alert indicator changes when an analyst

has taken action in response to the alert.

39.   (**Previously Presented**) The system of claim 37, wherein a different visual

representation of an alert indicator is provided depending on an action taken in response to

the alert.

40.   (**Previously Presented**) A computer-implemented method for monitoring analysts'

estimates, comprising the steps of:

storing on a per analyst basis, current estimate data for a plurality of analysts, the data

including at least an estimate amount and when the estimate was made;

analyzing the current estimate data and determining when one or more alert conditions

are satisfied; and

issuing an alert when at least one predetermined alert condition is satisfied for at least

one analyst.

APPENDIX B

EVIDENCE APPENDIX - *37 C.F.R. §41.37(c)(1)(ix)*

NONE.

APPENDIX C

RELATED PROCEEDINGS INDEX - *37 C.F.R. §41.37(c)(1)(x)*

NONE.